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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Communications Assistance)
for)
Law Enforcement Act)

CC Docket No. 97-213

To: The Commission

COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"),¹ by its attorneys, hereby submits comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in the above-referenced proceeding.²

In this proceeding the Commission seeks to evaluate the costs and reasonableness of proposed technical standards that would satisfy the "assistance capability requirements" of the Communications Assistance for Law Enforcement Act ("CALEA").³ The development of these "safe harbor" standards is especially important to small carriers, such as RCA members, for whom the development of individual technical standards for complying with

¹ RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service to predominantly rural areas where more than 6 million people reside. Formed in 1993 to address the distinctive issues facing rural cellular service providers, the membership of RCA currently includes rural PCS carriers, as well.

² In the Matter of Communications for Law Enforcement, Further Notice of Proposed Rulemaking, CC Docket No. 97-213, FCC 98-282, rel. Nov. 5, 1998.

³ Pub. L. No. 103-414, 108 Stat. 4279 (1994).

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CALEA is simply not feasible, notwithstanding the Commission's statement as to the "flexibility" afforded carriers in this regard.⁴ Therefore, the safe harbor standard is the standard against which most, if not all RCA member companies' compliance with CALEA will be measured. Given its importance, it is acutely frustrating that the proposed technical standards present potentially astronomical costs, which would certainly impact RCA members' customers.

The standards put forth for comment include those as to which the industry standards-setting body cannot agree - location information and packet data and packet-switching technology - and a wish list recommended by the Department of Justice (DOJ)/ Federal Bureau of Investigation (FBI). RCA cannot ascertain the costs of the proposed standards with any precision, but it is conceivable that they could be enormous. This would be particularly onerous for small carriers and their subscribers to bear.⁵

RCA is pleased that the Commission is particularly interested on the impact of costs associated with the CALEA capability requirements on residential ratepayers. Because RCA member companies' customer base is, by definition, small,

4 Further Notice at para. 7; "[c]ompliance with the industry standard is voluntary, not compulsory." Further Notice at para 32.

5 In previously filed comments to the Commission, RCA has described the burdensome impact of CALEA requirements on small, rural, wireless carriers, particularly when balanced against the historically limited number of wiretap requests in rural areas by law enforcement. See Reply Comments of Rural Cellular Association, CC Doc. 97-213, June 12, 1998

significant expenditures for infrastructure changes, such as those that may be required by the technical standards developed in this proceeding, will have a greater impact on RCA residential ratepayers than those of larger companies.

The costs of the proposed technical standards cannot be identified with any certainty because so many unknowns remain. Most notably, the CALEA capacity requirements, which bear on capability requirements, have hindered an accurate assessment of the capability requirements. As the Commission notes, "capability standards cannot be completed without first knowing the capacity that those capability standards must support."⁶ Secondly, though by no means insignificantly, the reimbursement aspect of CALEA is unsettled.⁷

RCA can state however, that the proposed standards could involve significant infrastructure upgrades to members' existing facilities. This is based on the fact that the DOJ/FBI "punch list" involves capabilities that have never been "reasonably available" in connection with traditional trap and trace operations in the past, and could involve software and/or hardware upgrades to facilities. For obvious reasons, such upgrades will pose a greater burden on small, rural carriers and their subscribers than on the industry in general.

6 Further Notice at para. 31.

7 There is still uncertainty as to whether the "grandfather date" for installed and deployed facilities and services will remain January 1995, or be extended to coincide with the June 2000 compliance date.

As for the technical capabilities themselves, RCA is pleased that the Commission has concluded that the location information standard does not require continuous location tracking, but instead "should be construed to mean cell site location at the beginning and termination of a call."⁸ Continuous tracking would be an extremely expensive undertaking; moreover, the origination and termination location satisfies the call identification requirement.

RCA takes issue with standards that would require a wireless carrier to report "call identification" information for calls that originate or terminate outside of its network facilities. Such a requirement is not technically feasible. This could occur, for example, with subject-initiated conference calls that involve a third party "bridge" contracted to provide conferencing. Such an arrangement places a call outside of the carrier's system, which should relieve the carrier of the monitoring responsibility under CALEA. If a carrier were required to monitor every such "bridge" provider, it would be at enormous expense. The Commission should clarify the carrier's responsibility in such situations to reflect what is feasible, as described herein.

Similarly, in three-way conference calls, where the "subject" is the bridge who initiates the calls, then disconnects, surveillance should end with the disconnection.

Another area that requires clarification is the carrier's

8 Further Notice at para. 55.

responsibility for monitoring "activities," e.g., call-forwarding, outside of its service area. For example, if customers' handsets are used outside of the licensed service area monitoring activity by the home carrier is technically limited, and in any event duplicated by the serving carrier. Therefore, the Commission should clarify a home carrier's responsibility under CALEA consistent with this operational limitation.

In sum, the proposed technical standards could be extremely costly to small, wireless carriers. Such increased costs would have a decidedly detrimental impact on their customers, notably, their residential ratepayers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of The Rural Cellular Association", was served on this 14th day of December 1998, by first class, U.S. Mail, postage prepaid to the following parties:


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